

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement  
Portions of AB 117 Concerning Community  
Choice Aggregation.

Rulemaking 03-10-003  
(Filed October 2, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING  
NOTICES OF INTENT TO CLAIM COMPENSATION**

**1. Summary**

This ruling responds to the notice of intent to claim compensation (NOI) filed on December 4, 2003 in this docket by San Francisco Community Power Cooperative (SF Co-op) pursuant to Public Utilities Code, Article 5, Section 1804. Like all intervenors, SF Co-op must demonstrate that its participation resulted in a substantial contribution to the proceeding by the unique presentation of facts or arguments that were relied upon by the Administrative Law Judge (ALJ) or California Public Utilities Commission (Commission) in resolving this proceeding.

**2. Statutory Requirements Relevant to SF Co-op's NOI**

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." It also permits the Commission to accept a late filing where a party could not have reasonably identified issues within 30 days of the prehearing conference.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the

intervenor is a customer, as defined in § 1802(b), and identify whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.) Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Section 1802(g) defines “significant financial hardship.”

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic

interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

### **3. SF Co-op's NOI**

In a ruling dated September 16, 2002 issued in R.02-06-001, the ALJ found the SF Co-op eligible to claim intervenor compensation under Pub. Util. Code Sections 1802(b). SF Co-op confirms that nothing has changed since that ruling was issued to change the Commission's finding. This ruling therefore finds that SF Co-op meets the first definition of customer, as set forth in § 1802(b), because it is an organization whose official mission includes representing the interests of San Francisco utility customers.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the expected nature and extent of the customer's participation in the proceeding. SF Co-op states it expects to be an active party in this proceeding and the extent and nature of its participation will depend on the activity and engagement of other parties. SF Co-op states its intent to file briefs and comments and to participate in evidentiary hearings if they are held.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. SF Co-op estimates a total projected budget of \$24,500 for this case, based on proposed hourly rates for its attorney and an analyst. It expects this amount to increase in the event the Commission conducts evidentiary hearings.

SF Co-op seeks a finding of significant financial hardship. SF Co-op has included its significant financial hardship showing in its NOI. By statute,

“'[s]ignificant financial hardship' means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of

participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

As a group or organization authorized by its bylaws to represent residential customers, SF Co-op must show that the economic interest of its individual members is small in comparison to the costs of participation.

(§ 1802 (g).) Under this standard the Commission reviews the annual utility bills of individual members to determine whether the cost of effective participation is great in comparison to the economic interest of these individuals. The Commission has previously found the existence of significant financial hardship for this category of “customer” to the extent it has customers with annual utility bills less than \$50,000 (D.98-02-012).

In a letter to the ALJ dated February 17, 2004, SF Co-op states it presently has 1,487 members, five of whom may have utility bills exceeding \$5,000. In its NOI filed in R.02-06-001, SF Co-op has claimed that these members cannot subsidize the Co-op’s efforts on behalf of its entire membership.

The interests of the vast majority of SF Co-op’s members are substantially smaller than the costs of effective participation in this statewide demand response rulemaking. Thus, SF Co-op would face significant financial hardship participating in this proceeding. The presence of five business members whose annual electricity bills exceed \$50,000 does not vitiate a finding of eligibility for the broader organization, a majority of whose members are residential and small commercial. At the time the Commission addresses SF Co-op’s compensation request, we may consider what percentage of the Co-op’s total membership actually faces a significant financial hardship, and consistent with prior decisions

presenting similar facts, it will reflect that determination in its calculation of any compensation award ultimately made. (See, e.g., D.02-06-014 and D.98-02-099.)

**IT IS RULED** that the SF Co-op is a customer as that term is defined in § 1802(b). SF Co-op has met the eligibility requirements of § 1804(a) and would experience significant financial hardship if it were to participate in this proceeding without intervenor compensation.

Dated February 26, 2004, at San Francisco, California.

/s/ KIM MALCOLM  
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Kim Malcolm  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated February 26, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.